

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CATHERINE ANTUNES,

Plaintiff-Appellant,

v.

No. 22-2190

XAVIER BECERRA, in his official capacity
as Secretary of U.S. Department of Health
and Human Services; RECTOR AND
VISITORS OF THE UNIVERSITY OF
VIRGINIA, *et al.*,

Defendants-Appellees.

**UNOPPOSED MOTION FOR LEAVE TO FILE
SEPARATE APPELLEES' BRIEFS AND FOR A 30-DAY
EXTENSION OF TIME TO FILE APPELLES' BRIEFS**

Pursuant to Federal Rule of Appellate Procedure 26(b) and Local Rule 28(d), the federal government respectfully moves for leave to permit the federal and Virginia governments to file separate appellees' briefs and for a 30-day extension of time, to and including March 24, 2023, in which to file those briefs. Plaintiff consents to this motion. In support of this motion, the government states the following:

1. Plaintiff Catherine Antunes was employed by the University of Virginia's Medical Center from January 2020 to November 2021. After Antunes refused to either comply with Medical Center's requirement that she be vaccinated against

COVID-19 or request a medical or religious accommodation from the requirement, her employment with the University of Virginia ended. Antunes then brought this lawsuit asserting claims against various federal government defendants and the Rector and Visitors of the University of Virginia. As to the federal defendants, Antunes generally asserts that the federal government unlawfully issued an Emergency Use Authorization for the COVID-19 vaccines and unlawfully failed to ensure that her employer did not terminate her for refusing to be vaccinated. As to University of Virginia, Antunes asserts a different suite of claims, generally alleging that the vaccination requirement violates the United States Constitution. The district court dismissed all of Antunes's claims, concluding that she lacked standing to sue the federal defendants and that she failed to state a claim against the University of Virginia.

2. The federal government requests that the federal and Virginia governments be permitted to file separate appellees' briefs. This division is necessary because the Department of Justice is charged with representing the interests of the United States. *See* 28 U.S.C. §§ 517-519. Therefore, the arguments to be made by the government must be within the exclusive control of attorneys for the United States. Consistent with that necessity, in similar circumstances, parties represented by the Department of Justice and co-parties not so represented regularly file separate sets of briefs in the courts of appeals.

The federal government also requests that the federal and Virginia briefs be considered separately for purposes of compliance with Federal Rule of Appellate Procedure 32(a)(7)(B)(i), although the federal government assures the Court that we will make every effort to avoid unnecessary duplication of arguments and will endeavor to keep the word count reasonable.

3. The federal government also requests that the deadline to file a response brief be extended by 30 days, to and including March 24, 2023. Plaintiff filed her opening brief on January 23, 2023. Under this Court's order of December 13, 2022, the government's response brief is due February 22, 2023. The government has not previously sought an extension of the briefing deadlines.

The requested extension is necessary to allow the government adequate time to prepare and review its brief. The attorney with principal responsibility for this matter is Sean R. Janda. Mr. Janda has recently been occupied with a number of other pressing matters, including *In re Aearo Techs.*, No. 22-2606 (7th Cir.) (amicus brief filed February 1, 2023); *Avalos v. United States*, No. 21-2008 (Fed. Cir.) (opposition to petition for rehearing en banc filed February 2, 2023); *Martin v. United States*, No. 21-2255 (Fed. Cir.) (opposition to petition for rehearing en banc due February 6, 2023); and a number of additional internal matters. In addition, the attorney with principal supervisory responsibility for this matter, Daniel Tenny, will present oral argument in the Third Circuit on February 7, 2023 in *United States v. Vepuri*, No. 22-1562 (3d Cir.). Mr. Tenny also has supervisory responsibilities on a number of other ongoing

appellate matters, including *Changizi v. Department of Health and Human Services*, No. 22-3573 (6th Cir.) (response brief filed January 30, 2023); *St. Vincent Medical Group v. Department of Justice*, No. 22-3009 (7th Cir.) (response brief filed February 1, 2023); *Window Covering Manufacturers Association v. CPSC*, No. 22-1300 (D.C. Cir.) (response brief due March 2, 2023); *Apter v. Department of Health and Human Services*, No. 22-40802 (5th Cir.) (response brief due March 9, 2023); and additional matters with internal deadlines.

In addition, the Commonwealth of Virginia has informed the federal government that the Commonwealth would also request a 30-day extension of time to file its response brief. The Commonwealth states: “Good cause exists for the extension, and this motion is not made for any improper purpose or delay. This request is necessary to accommodate scheduling conflicts with other matters, including a reply brief in support of a motion to dismiss due on February 13, 2023 in the U.S. District Court for the Eastern District of Virginia in *Goldman v. Youngkin*, No. 3:22-cv-789, a case seeking to enjoin a special election for a federal Congressional seat in Virginia; a response brief due on February 17, 2023 in the Court of Appeals of Virginia in *Medeiros v. Virginia Dept. of Wildlife Resources*, No. 1463-22-2, a case that involves a constitutional challenge to Virginia Code Section 18.2-136; a response brief due on February 24, 2023 in the Supreme Court of Virginia in *Moison v. Commonwealth*, No. 220536; response briefs due on March 6, 2023 and March 13, 2023 before this Court in *Bhattacharya v. Murray, et al.*, Nos. 22-1999/22-2064 and *Cartagena v. Lovell, et*

al., No. 22-7279; oral arguments before the Supreme Court of Virginia during the February 27 to March 3 oral argument session in *Tomlin v. Commonwealth*, No. 220223 and *DeLuca v. Commonwealth*, No. 220185; and oral arguments before this Court on March 7, 2023 in *Juniper v. Davis*, No. 16-2 and *Juniper v. Davis*, No. 21-9. For these reasons, the UVA Defendants respectfully request an additional 30 days to file their response brief—from February 22, 2023 to March 24, 2023.”

4. Accordingly, we respectfully request that the deadlines for both appellees be extended to March 24, 2023, and that the appellees be permitted to file separate briefs. Plaintiff’s counsel has informed the government that plaintiff consents to this motion.

Respectfully submitted,

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s/ Sean R. Janda

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FEBRUARY 2023

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system and service will be accomplished on all parties through that system.

/s/ Sean R. Janda
Sean R. Janda

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 979 words, according to the count of Microsoft Word.

s/ Sean R. Janda

Sean R. Janda